

APPEAL NO. 020244
FILED MARCH 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 8, 2002. The hearing officer determined that the respondent (claimant) had disability from September 19, 2001, to the date of the CCH. The appellant (carrier) appealed, arguing that the hearing officer erred in determining disability and further erred in determining the extent of the injury since it was not an issue before him. The claimant filed a response urging affirmance of the disability determination. The claimant also responded regarding extent of injury, asserting that the carrier had already accepted liability and that it had never filed a dispute over the extent of injury; that the medical records were in the possession of the carrier before the benefit review conference; and, that no issue was preserved by the carrier to argue extent of injury.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury to his low back and that as of the date of the CCH, no doctor had certified that the claimant had reached maximum medical improvement for his low back injury. The claimant testified that he injured his low back on _____, while he was assisting a nurse in lifting a patient who had fallen to the floor. There is conflicting evidence concerning the claimant's having been reprimanded by the employer on two occasions. The claimant stated he sought medical care from Dr. S on July 12, 2001, and that his employment was terminated on July 13, 2001. The documents in evidence reflect that Dr. S submitted a Texas Workers' Compensation Work Status Report (TWCC-73) which took the claimant off work from September 4, 2001, "until cleared by [Dr.H]." A medical report dated September 19, 2001, reflects that Dr. S released the claimant to full duty; however, Dr. H later corrected his report and submitted a TWCC-73 to reflect that the claimant's injury "has prevented and still prevents the employee from returning to work as of 9/19/01 (date) and is expected to continue through _____ (date)."

The hearing officer did not err in determining that the claimant had disability from September 19, 2001, through the date of the CCH. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. We observe that the compensable injury need not be the sole cause of the disability (Texas Workers' Compensation Commission Appeal No. 960054, decided February 21, 1996) and that the termination of employment for cause does not necessarily preclude disability (Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any

witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also urges on appeal that the hearing officer erred in determining an extent-of-injury issue that was not before him, namely, that the low back injury included disc bulges and stenosis at the L3-4 and L4-5 levels. We agree with the carrier and disregard those findings as superfluous.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge